

Marc A. Levinson (California Bar No. 57613)  
 Jeffery D. Hermann (California Bar No. 90445)  
 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 400 Capitol Mall, Suite 3000  
 Sacramento, CA 95814-4497  
 Telephone: (916) 447-9200  
 Facsimile: (916) 329-4900  
 Email: [malevinson@orrick.com](mailto:malevinson@orrick.com);  
[jhermann@orrick.com](mailto:jhermann@orrick.com)

Bob L. Olson (Nevada Bar No. 3783)  
 Anne M. Loraditch (Nevada Bar No. 8164)  
 BECKLEY SINGLETON, CHARTERED  
 530 Las Vegas Boulevard South  
 Las Vegas, NV 89101  
 Telephone: (702) 385-3373  
 Facsimile: (702) 385-5024  
 Email: [bolson@beckleylaw.com](mailto:bolson@beckleylaw.com);  
[aloraditch@beckleylaw.com](mailto:aloraditch@beckleylaw.com)

*Attorneys for Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**Affects:**

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
 Case No. BK-S-06-10725-LBR

**SECOND OMNIBUS OBJECTION OF  
 POST-EFFECTIVE DATE USA  
 CAPITAL DIVERSIFIED TRUST  
 DEED FUND, LLC, TO PROOFS OF  
 INTEREST**

Hearing Date: July 27, 2007  
 Hearing Time: 9:30 a.m.  
 Hearing Place: Courtroom 1

Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC ("Diversified"), a  
 revested debtor in the above-captioned cases, by and through its counsel noted above, hereby  
 submits this Second Omnibus Objection of Post-Effective Date USA Capital Diversified Trust  
 Deed Fund, LLC To Proofs of Interest (the "Objection"),<sup>1</sup> pursuant to which Diversified objects

<sup>1</sup> Due to the number of proofs of interest involved, this Objection is one of three objections to proofs of interest all filed substantially contemporaneously which, when taken together, will assert objections to an aggregate total of fifty-five (55) proofs of interest filed in the Diversified chapter 11 case.

1 to the proofs of interest described herein and as listed on **Exhibit 1** (the “Subject Interests”),  
2 attached hereto and made a part hereof, on the grounds that they (i) do not assert the correct  
3 amount of the equity interests held in Diversified as of the Petition Date (defined below) by the  
4 parties who filed the Subject Interests (the “Parties”), or (ii) are duplicates of proofs of interest  
5 already filed in the Diversified case. By this Objection, Diversified requests that the Subject  
6 Interests be disallowed (i) to the extent they assert amounts that are different from each  
7 respective Party’s equity interest in Diversified as of the Petition Date as reflected in  
8 Diversified’s books and records and allowed in the amount of each Party’s equity interest in  
9 Diversified as of the Petition Date per Diversified’s books and records, or (ii) in their entirety to  
10 the extent they are duplicative of proofs of interest already on file in the Diversified case. By  
11 this Objection, Diversified does not seek to prejudice the rights of any Diversified Member (as  
12 defined herein) who filed a Subject Interest to recover from Diversified on account of his or her  
13 membership interest in Diversified. A detailed list of the Subject Interests and the relief sought  
14 with respect to each Subject Interest is set forth on Exhibit 1 attached hereto.

15 The Objection is made pursuant to Section 502 of chapter 11 of Title 11 of the United  
16 States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure  
17 (the “Bankruptcy Rules”), Rule 3007 of the Local Rules of Bankruptcy Practice (the “Local  
18 Rules”), the points and authorities contained herein, the pleadings and papers on file with the  
19 Court in the above-captioned cases, as referenced by docket number, judicial notice of which is  
20 respectfully requested, and any oral argument of counsel the Court may wish to entertain at the  
21 hearing on this matter.

22 WHEREFORE, for all of the reasons set forth herein, Diversified respectfully requests  
23 that the Court enter an order (i) sustaining the Objection; (ii) disallowing the Subject Interests to  
24 the extent they assert amounts that are different from each respective Party’s equity interest in  
25 Diversified as of the Petition Date as reflected in Diversified’s books and records and allowed in  
26 the amount of each Party’s equity interest in Diversified as of the Petition Date per Diversified’s  
27 books and records, (iii) disallowing the Subject Interests in their entirety to the extent they are  
28

1 duplicative of proofs of interest already on file, and (iv) granting such other and further relief as  
2 the Court may deem just and proper.

3 DATED this 8th day of June 2007.

4 **BECKLEY SINGLETON, CHTD.**

5 By: /s/ Anne M. Loraditch  
6 Bob L. Olson (Nevada Bar No. 3783)  
7 Anne M. Loraditch (Nevada Bar No. 8164)  
8 530 Las Vegas Boulevard South  
9 Las Vegas, Nevada 89101

10 and

11 **ORRICK, HERRINGTON & SUTCLIFFE LLP**

12 Marc A. Levinson (California Bar No. 57613)  
13 Jeffery D. Hermann (California Bar No. 90445)  
14 400 Capitol Mall, Suite 3000  
15 Sacramento, CA 95814-4497  
16 Telephone: (916) 447-9200

17 *Attorneys for Post-Effective Date USA Capital*  
18 *Diversified Trust Deed Fund, LLC*

19 **POINTS AND AUTHORITIES**

20 **I.**

21 **JURISDICTION**

22 1. The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and  
23 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding  
24 under 28 U.S.C. § 157(b)(2)(B).

25 2. The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and  
26 Bankruptcy Rule 3007.

27 **II.**

28 **STATEMENT OF FACTS**

**A. Procedural Background Information.**

3. On April 13, 2006 (the "Petition Date"), USA Commercial Mortgage Company  
("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC

1 (“USA Realty”), USA First Trust Deed Fund, LLC (“FTDF”), and the Diversified Fund  
2 (collectively with USACM, USA Securities, USA Realty, and the FTDF, the “Debtors”) filed  
3 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continued  
4 to operate their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and  
5 1108 of the Bankruptcy Code. Post-petition management of the Debtors was under the direction  
6 of Thomas J. Allison of Mesirow Financial Interim Management, LLC (“Mesirow”), who served  
7 as the Chief Restructuring Officer.

8 4. On May 4, 2006, the Court entered its Amended Order Approving Debtor’s Ex  
9 Parte Application for Order Approving Employment of BMC Group, Inc. as the Claims Agent  
10 for Debtor’s Estate [Docket No. 149] authorizing BMC Group, Inc. (“BMC”) to serve as the  
11 Court’s notice agent and to act as the claims agent for the Debtors.

12 5. On May 9, 2006, the Court entered its Order Regarding Joint Administration  
13 Without Substantive Consolidation [Docket No. 184] linking the Chapter 11 Cases for joint  
14 administration under the USACM case name and number, BK-S-06-10725-LBR.

15 6. On June 15, 2006, pursuant to Bankruptcy Code Section 521(a)(1)(B), each of the  
16 Debtors filed their “Summary of Schedules and Statement of Financial Affairs” (collectively, the  
17 “Schedules”) based upon their books and records as of the Petition Date.

18 7. On September 14, 2006, the Court entered its Order Setting Deadline to File  
19 Proofs of Claim and Proofs of Interest [Docket No. 1280] setting the deadline of November 13,  
20 2006 (“Bar Date”), to file proofs of claim in the Chapter 11 Cases.

21 8. On September 15, 2006, the Court approved the Stipulated Order re Proofs of  
22 Interest [Docket No. 1293], in which the Debtors, the duly appointed Official Committee of  
23 Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the “Diversified  
24 Committee”), and the duly appointed Official Committee of Equity Security Holders of USA  
25 Capital First Trust Deed Fund, LLC (the “FTDF Committee”) stipulated that (1) the list of  
26 members with interests in Diversified and USA Capital First Trust Deed Fund, LLC (“FTDF”) provided by the Debtors to BMC shall be deemed the list of equity security holders filed  
27 pursuant to Bankruptcy Rule 1007(a)(3) and shall constitute *prima facie* evidence of the validity  
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1 and amount of equity security interests in Diversified and FTDF; (2) each holder of such  
2 interests shall be given notice of the Debtor in which it has an interest, and, if applicable,  
3 whether that interest is alleged to be contingent or disputed; (3) it shall not be necessary for the  
4 holders of such interests to file a proof of interest; and (4) the holders of such interests shall be  
5 deemed to have filed a proof of interest in the amount shown on the lists provided by the  
6 Debtors.

7 9. On or around September 18, 2006, BMC mailed proof of claim and proof of  
8 interest forms, together with instructions explaining that (i) if any equity interest holder (such as  
9 a Diversified Member) wished to assert a claim (as opposed to an equity interest) against any of  
10 the Debtors, then that equity holder must file a proof of claim but that proofs of claim should  
11 only be filed in those instances where the claimant believed one of the Debtors owed the  
12 claimant monies for such things as damages, rescission, reimbursement or contribution; and (ii)  
13 if the equity interest holder had no disagreement with the amount indicated on the proof of  
14 interest form included in the mailing, then that equity interest holder need take no action and his  
15 proof of interest in the Diversified Fund would be deemed allowed in the amount shown on the  
16 proof of interest form.

17 10. On November 16, 2006, Debtors filed the Debtors Third Amended Joint Chapter  
18 11 Plan of Reorganization (the "Plan").

19 11. On December 20, 2006, the Court orally confirmed the Plan and on January 8,  
20 2007, the Court entered an order confirming the Plan [Docket No. 2376].

21 **B. The Debtors' Businesses.**

22 12. As of the Petition Date, USACM acted as the servicer for 115 separate loans (the  
23 "Loans") having a combined outstanding loan balance of approximately \$962 million. *See*  
24 Supplemental Declaration of Thomas J. Allison in support of Debtors' Motions [Docket No.  
25 130], ¶ 2. All but three of the Loans were to have been secured by a deed of trust recorded  
26 against commercial real property. *Id.*, at ¶ 3.

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1           13. According to the Debtors, there are an estimated 3,600 investors (the “Direct  
2 Lenders”) whose names appear as lenders in the documents for one or more of the Loans. *Id.*,  
3 at ¶ 5. Diversified (together with FTDF, the “Fund Lenders”) is one such Direct Lender.

4 **C. Diversified and Its Holdings.**

5           14. Diversified was formed in 2000 for the sole purpose of investing in non-insider  
6 loans secured by first position deeds of trust on real property.

7           15. As of the Petition Date, Diversified had an interest as a Direct Lender in 23 of  
8 the Loans (the “Diversified Fund Loans”). In the Diversified Fund Loans, Diversified was the  
9 sole Direct Lender in 7 and held only a fractional interest in the remaining 16 Loans.

10           16. Diversified is owned by approximately 1,344 Diversified Members who  
11 purchased membership interests in the Diversified corporate entity. It bears emphasizing that it  
12 is Diversified as a corporate entity, and not the Diversified Members, that is a Direct Lender on  
13 the Diversified Fund Loans. Likewise, it is Diversified’s investments, and not those of the  
14 Diversified Members, that are secured – or should have been secured – by deeds of trust. The  
15 Diversified Members are only entitled to receive distributions from Diversified to the extent  
16 Diversified has profits remaining after all of its expenses and valid claims have been paid.  
17 Thus, the Diversified Members own Diversified, not Diversified’s investments, by virtue of  
18 their equity security interests.

19 **D. Analysis of Proofs of Interest Filed in the Diversified Case.**

20           17. As of the filing of this Objection, 195 proofs of interest had been filed in the  
21 Diversified case.

22           18. Diversified has analyzed all of the proofs of interest filed in the Diversified case  
23 and has determined that most assert an amount that corresponds with the amount of the equity  
24 interest held in Diversified by the respective Party as of the Petition Date, as reflected in the  
25 Debtor’s books and records. However, 35 of the proofs of interest filed in the Diversified case  
26 assert equity interests in Diversified that do not correspond to the amount of the equity interest  
27 held in Diversified by the respective Party as of the Petition Date, as reflected in the Debtors’  
28 books and records. Fifteen of the Subject Interests are interests with such differing amounts

(the “Differing Interests”). A detailed listing of the Differing Interests is included in Exhibit 1 attached hereto and incorporated for all purposes herein by this reference. In summary, Diversified has no liability for any of the Differing Interests to the extent the amounts asserted by each Differing Interest exceed the amount of the filing Party’s equity interest in Diversified as of the Petition Date as reflected in Diversified’s books and records. Accordingly, the Differing Interests should be disallowed in whole or in part as set forth in Exhibit 1.

19. Nineteen of the proofs of interest filed in the Diversified case are duplicative of proofs of interest already on file in the Diversified case that correspond to the amount of the equity interest held in Diversified by the respective Party as of the Petition Date, as reflected in the Debtor’s books and records, and are deemed allowed. Five of the Subject Interests are such duplicative interests (the “Duplicative Interests”). A detailed listing of the Duplicative Interests is included in Exhibit 1 attached hereto and incorporated for all purposes herein by this reference. In summary, Diversified has no liability for any of the Duplicative Interests, and all such interests should be disallowed in their entirety.

## II.

### ARGUMENT

#### A. Interests Should Be Allowed Only in the Amounts Set Forth in the Debtors’ Books and Records.

Bankruptcy Code Section 502 authorizes a party in interest to object to claims or interests. *See* 11 U.S.C. §502(a). Upon such objection, this Court, “after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . . .” 11 U.S.C. § 502(b). Although a proper proof of claim or interest is presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the holder of the claim or interest has the ultimate burden of persuasion as to the validity and amount of the claim. *Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (B.A.P. 9<sup>th</sup> Cir. 1995), *aff’d*, 91 F.3d 151 (9<sup>th</sup> Cir. 1996) (quoting *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)).



1 The Bankruptcy Appellate Panel for the Ninth Circuit explained the shifting burdens of  
2 proof with respect to objection to proofs of claim as follows:

3 The burden of proof for claims brought in the bankruptcy court under 11  
4 U.S.C.A. § 502(a) rests on different parties at different times. *Initially, the*  
5 *claimant must allege facts sufficient to support the claim. If the averments*  
6 *in his filed claim meet this standard of sufficiency, it is “prima facie”*  
7 *valid. In other words, a claim that alleges facts sufficient to support a*  
*legal liability to the claimant satisfies the claimant’s initial obligation to*  
*go forward. . . . The burden of persuasion is always on the claimant.*

8 *Id.* (emphasis added). Following this decision, the District Court for the Northern District of  
9 California emphasized, “unless the claimant has alleged ‘facts sufficient to support a legal  
10 liability, ‘the claim is not prima facie valid.’ *In re Hongnisto*, 293 B.R. 45, 50 (N.D. Cal. 2003)  
11 (quoting *Consolidated Pioneer Mortg.*, 178 B.R. at 266) (holding that the claimant’s proof of  
12 claim failed to allege sufficient facts to support a legal liability and consequently disallowed the  
13 proof of claim); *see Consolidated Pioneer Mortg.*, 178 B.R. at 227 (holding that because the  
14 proof of claim did not allege sufficient facts to support the claim, the proof of claim was  
15 disallowed). As Bankruptcy Code Section 502(a) refers to both claims and interests, the burden  
16 shifting analysis described above applies to proofs of interest as well as to proofs of claim. *See*  
17 11 U.S.C. § 502(a) (“A claim or interest, proof of which is filed under section 501 of this title,  
18 is deemed allowed, unless a party in interest . . . objects.”).

19 **B. Duplicative Interests Should Be Disallowed.**

20 Holders of claims or interests should not be allowed multiple recoveries for the  
21 identical claim or interest. As set forth in paragraph 19 above, several of the Subject  
22 Interests are duplicative of other proofs of interest filed in the Diversified case and,  
23 accordingly, should be disallowed. Bankruptcy Code Section 502(b)(1) provides that a  
24 bankruptcy court shall not allow a claim that “is unenforceable against the debtor and property  
25 of the debtor, under any agreement or applicable law for a reason other than because such claim  
26 is contingent or unmatured.” 11 U.S.C. § 502(b)(1). Section 502 therefore precludes the  
27 allowance of duplicative proofs of interest because applicable law plainly prevents a claimant  
28 from recovering twice on a single interest. *See Fine Organics Corp. v. Hexcel Corp. (In re*



1 *Hexcel Corp.*), 174 B.R. 807, 811 (Bankr. N.D. Cal. 1994) (noting the bankruptcy policy  
 2 “intended to protect the limited assets of the estate from duplicative claims”); *In re Finley,*  
 3 *Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 160 B.R. 882, 894 (Bankr.  
 4 S.D.N.Y. 1993) (“to allow one creditor to assert two dollars in claims for every one dollar of  
 5 loss from the same debtor violates principles of ratable distribution and offends notions of  
 6 uniform treatment for creditors”) (quotations omitted). Therefore, all of the Duplicative  
 7 Interests should be disallowed in their entirety.

### 8 **III.**

#### 9 **NOTICE**

10 This Objection will be served on (i) all of the parties who filed the Subject Interests at  
 11 the addresses set forth on the parties’ respective proofs of interest, (ii) all parties on the Post  
 12 Effective [Date] [sic] Official Service List for Limited Notice No. 2 dated June 1, 2007 [Docket  
 13 No. 3874] and (iii) all parties who have filed requests for special notice since the filing of such  
 14 master service list. In light of the nature of the relief requested, Diversified submits that no  
 15 further notice need be given.

### 16 **IV.**

#### 17 **CONCLUSION**

18 WHEREFORE, for all of the reasons set forth herein, Diversified respectfully requests  
 19 that the Court enter an order (i) sustaining the Objection; (ii) disallowing the Differing Interests  
 20 to the extent they assert amounts that are different from each respective Party’s equity interest in  
 21 Diversified as of the Petition Date as reflected in Diversified’s books and records and allowed in  
 22 the amount of each Party’s equity interest in Diversified as of the Petition Date per Diversified’s  
 23 books and records, (iii) disallowing the Duplicative Interests in their entirety to the extent they

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1 are duplicative of proofs of interest already on file, and (iv) granting such other and further relief  
2 as the Court may deem just and proper.

3 DATED this 8th day of June 2007.

4 **BECKLEY SINGLETON, CHTD.**

5 By: /s/ Anne M. Loraditch  
6 Bob L. Olson (Nevada Bar No. 3783)  
7 Anne M. Loraditch (Nevada Bar No. 8164)  
8 530 Las Vegas Boulevard South  
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12 Marc A. Levinson (California Bar No. 57613)  
13 Jeffery D. Hermann (California Bar No. 90445)  
14 400 Capitol Mall, Suite 3000  
15 Sacramento, CA 95814-4497  
16 Telephone: (916) 447-9200

17 *Attorneys for Post-Effective Date USA Capital*  
18 *Diversified Trust Deed Fund, LLC*  
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## EXHIBIT 1

## Proofs of Interest Subject to Objection

Proof of Interest No.	Equity Interest Holder	Acct ID #	Date of Proof of Interest	Asserted Equity Interest Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
175	Anne Nounna	999	11/13/06	\$100,000	\$100,000	Disallow interest in its entirety as duplicative of interest no. 174 already filed in the Diversified case.
176	Anne Nounna	999	11/13/06	\$100,000	\$100,000	Disallow interest in its entirety as duplicative of interest no. 174 already filed in the Diversified case.
127	Olympia Capitol Mgmt, Registrant	15238	11/10/06	\$100,000	\$96,094.65	Disallow interest to the extent it exceeds \$96,094.65, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
024	Robert J. Scott	10827	10/02/06	\$77,423.96	\$72,070.98	Disallow interest to the extent it exceeds \$72,070.98, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.

Proof of Interest No.	Equity Interest Holder	Acct ID #	Date of Proof of Interest	Asserted Equity Interest Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
099	Carol Turner	3012	11/02/06	\$98,054.36	\$96,094.65	Disallow interest to the extent it exceeds \$96,094.65, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
090	John Weaver	9838	11/01/06	\$59,548.51	\$59,548.51	Disallow interest in its entirety as duplicative of interest no. 23 already filed in the Diversified case.
088	Raul Wood	9784	10/31/06	\$33,564.91	\$33,564.91	Disallow interest in its entirety as duplicative of interest no. 86 already filed in the Diversified case.
089	Raul Wood	10384	10/31/06	\$31,439.12	\$31,439.12	Disallow interest in its entirety as duplicative of interest no. 85 already filed in the Diversified case.
039	1994 Duesing Trust	5827	10/10/06	\$200,000	\$192,189.29	Disallow interest to the extent it exceeds \$192,189.29, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.

Proof of Interest No.	Equity Interest Holder	Acct ID #	Date of Proof of Interest	Asserted Equity Interest Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
030	Bank of America Trustee, IRA Herbert Hansen	2067	10/02/06	\$49,287.32	\$48,047.32	Disallow interest to the extent it exceeds \$48,047.32, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
158	Benjamin Barnica	7149	11/14/06	\$25,000	\$24,023.66	Disallow interest to the extent it exceeds \$24,023.66, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
110	Jean Berthelot	17505	11/09/06	\$33,965.51	\$24,023.66	Disallow interest to the extent it exceeds \$24,023.66, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
065	Tearnan Blake	12053	10/16/06	\$59,058.88	\$58,958.88	Disallow interest to the extent it exceeds \$58,958.88, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.

Proof of Interest No.	Equity Interest Holder	Acct ID #	Date of Proof of Interest	Asserted Equity Interest Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
095	Douglas Carson	354	11/07/06	\$150,000.00	\$144,141.97	Disallow interest to the extent it exceeds \$144,141.97, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
093	Laurie Carson	378	11/07/06	\$25,000.00	\$24,023.66	Disallow interest to the extent it exceeds \$24,023.66, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
173	Vincent Danelian	467	11/15/06	\$49,047.32	\$48,047.92	Disallow interest to the extent it exceeds \$48,047.92, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
071	Debra Williams	11553	10/20/06	\$30,533.48	\$29,923.24	Disallow interest to the extent it exceeds \$29,923.24, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.

Proof of Interest No.	Equity Interest Holder	Acct ID #	Date of Proof of Interest	Asserted Equity Interest Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
040	Albert H. Downing	16816	10/10/06	\$50,000.00	\$48,047.32	Disallow interest to the extent it exceeds \$48,047.32, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
049	David Joyce	15527	10/11/06	\$96,594.65	\$96,094.65	Disallow interest to the extent it exceeds \$96,094.65, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.
187	Frederick W. Kewell	17527	11/16/06	\$50,000.00	\$52,439.42	Disallow interest to the extent it exceeds \$52,439.42, which is the amount of the filing Party's equity interest in Diversified as of the Petition Date, as reflected in Diversified's books and records.